



May 22, 2001

Ms. Elaine S. Hengen  
Assistant City Attorney  
Office of the City Attorney  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR2001-2118

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147532.

The El Paso Police Department (the "department") received two requests for a copy of case number 00-134089. The second requestor also seeks copies of any other information pertaining to certain allegations against a specific individual. You state that you will release 45 pages of information to the second requestor upon receipt of payment for copy costs. You claim that portions of the remaining records are excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted representative sample documents.<sup>1</sup>

You claim that Exhibits B, E, F, G, and K contain information that is excepted from disclosure pursuant to section 552.101 in conjunction with the common law right of privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 incorporates the

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<sup>1</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

common law right of privacy. For information to be protected by common law privacy it must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court held that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See id.* at 685.

In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common law privacy. *See* Open Records Decision Nos. 393 at 2 (1983), 339 (1982). After reviewing the submitted information, we conclude that the marked portions of Exhibits B, E, F, G, I, and K must be withheld from disclosure by the department under section 552.101 in conjunction with the common law right to privacy. The department must also withhold similar information found on Exhibit H.

You also claim that some of the submitted information is confidential by law. Section 552.101 also encompasses information protected by other statutes. You assert that section 772.318 of the Health and Safety Code, one of several confidentiality provisions in chapter 772 of the Health and Safety Code, protects from disclosure the addresses and telephone numbers found in Exhibit I. As you raise this section, we assume that the emergency 911 district involved here was established in accordance with chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218 and 772.318 of the Health and Safety Code make confidential the originating telephone numbers and addresses of 911 callers furnished by a service supplier. *See* Open Records Decision No. 649 (1996). Section 772.118 applies to emergency communication districts for counties with a population over two million. Section 772.218 applies to emergency communication districts for counties with a population over 860,000. Section 772.318 applies to emergency communication districts for counties with a population over 20,000. Subchapter E, which applies to counties with populations over 1.5 million, does not contain a confidentiality provision regarding 911 telephone numbers and addresses. *See* Health & Safety Code § 772.401, *et seq.* Thus, if the emergency communication district here is subject to section 772.118, 772.218 or 772.318, the originating telephone numbers and addresses on pages 4 and 5 of Exhibit I are excepted from public disclosure based on section 552.101 as information deemed confidential by statute.

You claim that some of the information in Exhibit K is excepted from disclosure pursuant to section 552.101 in conjunction with section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. Section 58.007 states in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Some of the information in Exhibit K concerns juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply. Therefore, this information is confidential pursuant to section 58.007(c) and must be withheld from disclosure pursuant to section 552.101. We have marked the information in Exhibit K that must be withheld from disclosure.

You claim that Exhibit J contains cellular telephone numbers that must be withheld from disclosure pursuant to section 552.108 of the Government Code. You state that these numbers are paid for by the City of El Paso, are assigned to police officers or volunteers working with the department's Domestic Abuse Response Team, and are used for official police business only. Section 552.108(b)(1) of the Government Code excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release would interfere with law enforcement or prosecution." See Gov't Code § 552.108(b)(1). Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that release of these cellular telephone numbers would interfere with law enforcement and the law enforcement-related duties of police officers and special volunteers who respond to domestic abuse calls. After reviewing your arguments, we conclude that releasing the cellular telephone numbers would interfere with law enforcement. See Open Records Decision Nos. 636 (1995), 506 (1988). Therefore, the department may withhold from disclosure the marked cellular telephone numbers in Exhibit J pursuant to section 552.108(b)(1) of the Government Code.

You claim that Exhibit K contains information protected from disclosure by section 552.117(2) of the Government Code. Section 552.117(2) excepts from disclosure

a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members regardless of whether the peace officer made an election under section 552.024 of the Government Code. The information you seek to withhold was obtained by the department during the course of a criminal investigation. We do not believe that section 552.117(2) is applicable where a law enforcement agency is investigating an officer's alleged involvement in criminal activity. Accordingly, the department may not withhold the marked information in Exhibit K under section 552.117(2) of the Government Code.<sup>2</sup>

We note that among the documents submitted for our review are print-outs that appear to contain criminal history record information ("CHRI") generated by the Texas Crime Information Center ("TCIC") or the National Crime Information Center ("NCIC"). The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 10-12 (1990). Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, Gov't. Code § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations, *see* Open Records Decision No. 565 (1990), and any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F.

Finally, you claim that Exhibits G and H contain drivers' license numbers and license plate numbers that must be withheld from disclosure pursuant to section 552.130 of the Government Code. Section 552.130(a) excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must withhold the marked drivers' license numbers in Exhibit G and the license plate numbers found on Exhibit H pursuant to section 552.130(a) of the Government Code.

In summary, you must withhold from disclosure information marked in Exhibits B, E, F, G, I, and K pursuant to section 552.101 in conjunction with the common law right to privacy. The department must also withhold similar information from Exhibit H. If the emergency communication district here is subject to sections 772.118, 772.218, or 772.318 of the Health and Safety Code, you must withhold from disclosure under section 552.101 the callers'

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<sup>2</sup>We note that some of the information the department seeks to withhold in Exhibit K does not appear to be responsive to either request for information. A governmental body is only required to release information that is responsive to a request.

telephone numbers and addresses found on pages 4 and 5 of Exhibit I. You must withhold from disclosure information marked in Exhibit K pursuant to section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. You may withhold from disclosure the marked cellular telephone numbers in Exhibit J pursuant to section 552.108(b)(1) of the Government Code. You may not withhold from disclosure the marked information in Exhibit K under section 552.117(2) of the Government Code. You must withhold from disclosure the marked drivers' license numbers in Exhibit G and the license plate numbers found on Exhibit H under section 552.130(a) of the Government Code. Finally, you must withhold any CHRI contained in the submitted records. The remaining submitted information must, however, be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

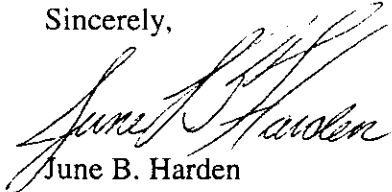
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "June B. Harden".

June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/RJB/seg

Ref: ID# 147532

Encl: Marked documents and audiotape

cc: Mr. Johnny Edwin Anderson, Jr.  
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(w/o enclosures)

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